

1895-027 Chancery Cause: Adm. of George R. Ely vs. S. S. Rose &
Lee Co.

Flanary, Forester

-Deed

CH-Contract Dispute
T-Property

Virginia:

To the Hon. W^m J. Miller, Judge of the Circuit Court
of Lee County:

Humbly complaining, sheweth unto your Honor,
your orator, L. C. Flanery, Administrator of the
estate of George R. Ely, deceased, who died intestate,
that your orator was appointed Administrator of said estate by the County Court of Lee County, Va, on the 20th day of August 1874,
which will fully appear by an attested

Office Copy of the Order making said
appointment herewith filed marked "Enc."
Your orator further represents that the said
George R. Ely, in his lifetime, and on the 27th
day of November, 1875, was seized of or en-
titled to a good fee simple estate in and to
certain land lying in the County of Lee;
and the said George R. Ely, now deceased,
being so seized or entitled, and being desirous
to sell the same, did contract with one S. S.
Rose, on the said 27th day of September,
1875, for the sale of the said land to him;
at which time the said S. S. Rose did agree
to purchase the said land of your orator,
at the price of \$900⁰⁰, and the said George
R. Ely, and Jane Ely his wife, and Lorenzo Jackson
Blankenship, Hezekiah Scott Blankenship and
Jerome B. Blankenship by Charles L. Blankenship
their Attorney in fact, did on the said 27th
day of November, 1875, execute and deliver
to the said S. S. Rose a good and sufficient
 deed of conveyance, conveying the said
land to the said S. S. Rose, ^{after fully complying with their Contract} reserving a
venditor's equitable lien therein for the

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purchase money, which said the said
 S. A. Rose accepted as a good and sufficient
 conveyance of the land ^{after the manner of this agreement} thereunto described, and
 had the same recorded in the Clerk's Office of
 the County Court of Lee County, Va, on the 27th
 day of November, 1875, a copy of said ^{and} is here filed as
 exhibit "A."
 Your orator further shews unto your
 honor that he is informed and believes that
 none of the vendors in said deed have
 any interest in the Considerations and
 vendors lien mentioned in said deed
 except Your orator, the decedent George R. Ely
 having paid the other vendors for their interest
 in said land prior to the date of said deed
 and they only joined in the same for the
 purpose of passing title.

Your orator further states that all the purchase
 money named in said deed has been paid,
 except one bond for the sum of fifty dollars
 dated November 27th 1875, due January 1st
 1879, executed to the said George R. Ely by the
 said S. A. Rose, and is for a portion of the
 purchase money for said land. Said bond
 is here filed marked "B" and is prayed
 to be taken in connection with exhibit
 "A" and considered as a part of this
 bill.

Your orator further represents that he is
 informed and believes that the said S. A.
 Rose, or some vendor of the said S. A. Rose, has
 sold the said land to one Solomon Forester,
 and that the said Forester is now in the
 possession of the same, and that the
 said Forester had actual and constructive

3) notice ~~notice~~ of the vendor's equitable lien
of the said George R. Ely, deceased, at the
time he purchased said land.

Prayer

In tender consideration whereof, and
forasmuch as your orator is remediless
in the premises, save by the aid of a
Court of equity, where matters of this kind
are alone cognizable, your orator prays
that the said J. P. Rose and Solomon Forester
may be made parties defendant to this bill,
and required to answer the same on oath, as
fully and particularly as if the allegations herein
were here again repeated, and they thereto speci-
ally interrogated, but not upon oath that being
forfeited; that the said vendor's equitable lien be
enforced by proper decree, and ^a sufficiency of
the land mentioned in this bill and the exhibits
filed therewith sold to satisfy the bond here
said on and the costs of this suit; that
proper process may issue, and that your
orator may have such other further and
general relief as the nature of the case
may require, or to equity shall seem meet.

And your orator will ever pray, &c.

Geo. R. Ely & Son

Sols

76.86
3.84
76.86

1870
23.30
29.30
76.86
39430

\$6.61
50
attys 1500
Coe 287

\$22.36
Estimate 200

\$24.36
5.00
Printer 29.36
10
\$19.36

C. E. Flawry, Adm &c

vs } Bill in Chy

A. S. Rose et als

1894 1st September Rules bill
filed & Ord of Publication
& Continued
" 2nd September Rules Contd
for order Publication
" 1st October Rules order
Publication Completed
& Decree nisi as to non
resident Deft
" 2nd October Rules Decree
Executed & Decree nisi as
to resident Deft & Confirmed
as to non resident
1st Nov Rules taken the last
Monday in Oct & nisi
Confirmed as to resident
Deft & cause set for hearing
by Plff

OTT, Chy & OTT, Sols.

C. E. Flanary, Adm'r, &c.

Against (In Chancery.

S. S. Rose, et al.

To the Hon. W. T. Miller, Judge of the Circuit Court
of Lee County, Virginia:

The Separate answer and demurer of S.S. Rose to a bill
in chancery exhibited in this honorable Court against him-
self and another by C. E. Flanary, administrator of George
R. Ely, deceased. Answering your respondent says that
said bill is not sufficient in law to call upon him to answer
in this honorable Court, and he demurs to the same according-
ly. But should other and further answer be required, an-
swering he says, that it is true that one George R. Ely in
his lifetime was seized and possessed of certain lands sit-
uated in said county, and that on the day and year alleged
in the bill the said Ely together with others sold and con-
veyed the same to your respondent. It is also true that
your respondent executed and delivered the \$50.00 note to
the said George R. Ely, being the same with the bill exhib-
ited and sought to be collected. But your respondent here
alleges and avers that he long ago fully and completely paid
the said note together with all interest due thereon to the
said George R. Ely in his lifetime. And your respondent
here avers that neither this note, nor any instrument what-
ever, nor any part of the purchase money for the said land
now remains unpaid; but the whole of said money together
with all interest due thereon has long since been wholly,
fully and completely paid. As will be ^{seen by} answer of your re-
spondent's co-defendant, said land has long since been sold
and conveyed.

And were it even not true that the said note has not
been paid, your respondent is advised that the collection
of the same is barred by the statute of limitation, which
statute is here invoked.

And having fully answered your respondent prays to be hence
hence dismissed with his reasonable costs in this behalf ex-
pended.

S. S. Rose,

By
Geo. Blankenship & Co.,
Attys.

C. E. Flannery, Admins. Ac.

vs. } Ans. of Rose.

S. S. Rose, et al.

C. E. Flanagan Administrator
vs.
S. S. Rose et al

} Decree final

This cause came on this day to be heard upon the papers formerly read in the cause, and was argued by counsel, On consideration of which and it being admitted in open Court that since the last term of this Court Solomon Forester had paid in full the amount of the debt and costs decreed against S. S. Rose, at the last term of this Court, It is therefore ordered and decreed that the cause be stricken from the docket.

C. E. Hanaquah
w/ { Descriptive
S. S. Rose et al.

O. B.

Page 102

Enter This

~~M. M.~~

March 6th 1895

1
12
This deed ^{made} on this the 27th day of November 1875
between George R. Ely and Jane Ely his wife of Lee County
Virginia and Lorenzo Jackson Blankenship, Hershiah Scott
Blankenship and Jerome B. Blankenship of Barry County
Missouri by Charles C. Blankenship of Lee County
Virginia of the one part and Samuel S. Rose of Scott
County Virginia of the other part.

Witnesseth that for and in consideration of the sum
of nine hundred dollars the said parties of the first
part, that is, the said George R. Ely and Jane his wife
have granted, bargained and sold and do hereby convey
to the said Samuel S. Rose a certain tract, lot or
parcel of land lying and being an Sugar run about
6 miles north west of Jonesville in Lee County
Virginia, being a part of the land once owned by Arthur
M. Blankenship deceased and the lot hereby conveyed
contains acres be the same more or less and is
bounded as follows to wit, Beginning at a stake in the
road near the widow Blankenships house, a corner to
the widows lower land, thence with the said road
and with a line of lot no. 2 as laid down in the
partition of the lands of Arthur M. Blankenship deceased
S. 68 N. 45 poles to a stake on Taylors line on the north side
of said road thence with said Taylors line S. 22 E. poles
to a rock a corner between the said George R. Ely and
Bishop on Taylors line thence with the line between said
Bishop and George R. Ely S. 84 $\frac{1}{2}$ E. 222 poles to a stake on
Harbors line and with said line N. 15 W. poles to a
stake a corner to the tower laid off and assigned to Levine
Blankenship and with the line thence of N. 84 W. 176 poles to
a stake near the barn, thence N. 15 W. 28 poles to the beginning
and the said George R. Ely and Jane his wife also grant

1 again sell and convey to the said Samuel S. Rose
2 all their right title and interest in the lower land
3 laid off and allotted to the widow Livina Blankenship
4 and the said Lorenzo Jackson Blankenship and Horiah
5 Scott Blankenship and James B. Blankenship
6 by the said Charles C. Blankenship who is their attorney
7 in fact, do also for the consideration aforesaid, grant
8 bargain sell and convey to the said Samuel S. Rose
9 all their right title and interest in and to the lower
10 lands laid off and assigned to Livina Blankenship
11 widow of Arthur M. Blankenship deceased, but the said
12 George R. Ely and Jane his wife do hereby reserve and
13 do not convey by this deed the undivided half of the
14 interest owned by Carter and Carter his wife
15 and the other heirs of Horiah Blankenship deceased
16 and the said George R. Ely and Jane his wife do covenant
17 by this deed only the lifetime interest of the said
18 George R. Ely in that part of the land hereby conveyed
19 which was inherited by Mary Ely his first wife. It is
20 understood by this deed that the parties of the first part
21 do by this deed grant, bargain, sell and convey to the
22 said Samuel S. Rose all their right title and interest
23 legal or equitable, present and reversionary in all the real
24 estate once owned by the said Arthur M. Blankenship
25 and included in his widow's dower which lies north
26 of the said land now owned and occupied by the said
27 Bishop, and the parties of the first part do hereby retain
28 and reserve a vendors equitable lien on said land and
29 interests in land hereby conveyed for the purchase money
30 due and to become due and interest thereon so that the said
31 land and interests in the same shall be bound for the same
32 in the same manner as if this deed had never been

made. And the said parties of the first-part do hereby
covenant each for themselves that they will each warrant
generally the land and interests in land hereby conveyed
to the extent that they each of them have titles to the same
against the claims of all persons whatever except that
the said George B. Ely and Jane his wife do not warrant
more than a lifetime interest in his first wife Mary
Ely's part, And yet further that they do not warrant
but one half the share of Hiramiah Blankenship's heirs
the other half being warranted generally by said George
B. Ely, Witness the following signatures and seals.

George B. Ely ^{his} Seal

Emily Ely ^{her} Seal

Lorenzo Jackson Blankenship Seal

Hiramiah Scott Blankenship Seal

Jerome B. Blankenship Seal

By Charles C. Blankenship Their attorney in fact Seal
Virginia Lee County Court Clerk's office the 27th day of
Nov. 1875, The foregoing deed from George B. Ely & Jane his
wife of Lee County, Virginia Lorenzo J. Blankenship, Hiramiah
S. Blankenship and Jerome B. Blankenship of Barry County
Missouri by their attorney in fact, C. C. Blankenship of
the one part, to Samuel S. Rose of the other part was
this day acknowledged before me by the said parties
of the first part to be their act and deed, and the said Jane
Ely wife of the said George B. Ely being examined by me
privily and apart from her said husband and having
the said deed read & fully explained to her she acknowledged
that she had willingly executed the same and did not
wish to retract it and said deed is admitted to record.

Teste James W. Orr. Clerk

4 Copy. Teste Ed. J. F. Richmond
Clerk

S. S. Chase

From } } } Copyholders

H. B. Ely et al -

"2"

Co a 17505
"

1
"Orcl"

Virginia: At a county Court begun and
held for ~~this~~ county at the Court house
thereof on Monday August 20th 1894.

On Motion of A. C. Ely. It is ordered
that the estate of George R. Ely, deceased, be
and is hereby committed to L. E. Flanery
Sheriff of this County for Administration
A Copy. Teste J. W. Richmond Clerk

C 25-

\$ 5000

On or about the 1st day of
January 1877 I sold my stock
to my wife for the sum of \$5000
which was paid to me in full
and I hereby certify the receipt of my
purchase and receive hereby ex-
hibiting it to the said witness
my hand and seal this 1st day
of January 1877

Witnesses

A. S. Hall

David Miller

L. Gibson

B.

H. R. Ely
Lund. Note 500
S. S. Kove.

Virginia:

In the Clerk's Office of the Circuit Court of the County of

Lee

W. E. Flannery, Admin'r of the Est of Geo R. Ely, dec'd

Plaintiff,

against

J. I. Rose and Solomon Forester

Defendants.

This day

Wm. A. Orr, Sr.

personally appeared

before me,

A. B. Munsey

Clerk of the said Court,

and being duly sworn, made oath that

J. I. Rose

defendant in the said suit is not a resident of the State of Virginia,

according to

his information and belief

Given under my hand as Clerk of the said Court, this

24th

day of

August-

18 94.

A. B. Munsey Clerk

L. E. Flannery Admin

vs. { AFFIDAVIT FOR ORDER
OF
PUBLICATION.

S. S. Rose et al

Orr, Ely & Orr p. q.

In the Clerk's Office of the Circuit Court of the County of
Lee on the 24th Day of August 1894.

B. E. Flannery Admin^r of the Estate of G. R. Dwyer dec'd
against Plaintiff In Chancery

S. S. Rose & Solomon Forrester Defendant &c.

The object of this suit is to enforce a Vendor's lien against
Real Estate

And an affidavit having been made and filed that the defendant S. S. Rose is

not a resident of the State of Virginia, it is ordered that he do appear here, within Fifteen days
after due publication hereof, and do what may be necessary to protect his interest in this suit. And
it is further ordered that a copy hereof be published once a week for four weeks in the South West
Virginian, and that a copy be posted at the front door of the court-house of this County
on the first day of the next term of the County Court.

A copy—Teste:

Or. Ely. Orr

p. q.

A. B. Mursey

Clerk.

to E. Flanary admr.

vs.

}

ORDER OF
PUBLICATION.

S. S. Rose et al

I A. B. Munsey clerk of
the Circuit Court for Lee Co
do certify that I delivered
a copy of the within by
W. H. Gads Editor of South
West Virginian for pub-
lication on the 24th day
of August ~~for publication~~
postpaid & copy at the front
door of the Court house
as the law directs I have
given under my hand
this the 16th day of October
A. B. Munsey Clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon

S. S. Rose & Solomon Forrester

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said

Court on the *3rd* Monday in *October*, 189*4*, to answer a bill in Chancery,

exhibited against *them* in our said court by *L. E. Flanary*

Administ^r of all and singular the goods & Chattels
rights and credits which *W. R. Ely's deceased*
and who died intestate

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the

21st day of *August*

189*4*, and in the 11 *9th* year of the

Commonwealth.

A Copy Teste

A. B. Munsey Clerk

A. B. Munsey Clerk

vs. { SUPCENA
IN CHANCERY.

p. q.

To..... Rules,
Circuit Court.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon

S. S. Rose + Solomon Forrester

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said

Court on the *3rd* Monday in *October*, 189*4*, to answer a bill in Chancery,

exhibited against *them* in our said court by *L. E. Flanary*
administrator of all and singular the goods + Chattels
rights and Credits which were H. R. Elys deceased
and who died intestate

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the

21st day of *August*

189*4* and in the 11 *9th* year of the

Commonwealth.

A. B. Munsey Clerk.

L. E. Flanary, Admr

vs. { SUPENA
IN CHANCERY.

S. S. Rose et al

M. G. Ely p. q.

To 2nd October Rules,
Circuit Court.

^{in part}
Executed by delivering
a true copy of within
summons to Solomon
Florisler, not farther
executed not found
this August 25 - 1894.
J. W. Weston Secy. for
L. E. Flanary & L. C.

CERTIFICATE OF ORDER OF PUBLICATION.

We, A. M. Goins and W. H. Eads,
editors of the SOUTHWEST VIRGINIAN,
a weekly newspaper published at
Jonesville, Lee county, Virginia, do
hereby certify that the annexed no-
tice was published in said paper
once a week for four successive
weeks, commencing on the 30

day of Aug 1894.

A. M. Goins

W. H. Eads

} Editors.

Virginia:--In the Clerk's Office of
the Circuit Court of the county of
Lee, on the 24th day of Aug. 1894.

C. E. Flanary, Adm'r of the estate of
Geo. R. Ely, dec'd Plaintiff.

AGAINST

S. S. Rose and Solomon Forester, De
fendants.

The object of this suit is to enforce a
vendors lien against real estate. And
an affidavit having been made and filed
that the defendant S. S. Rose is not a
resident of the State of Virginia, it is
ordered that he do appear here, within
15 days after due publication hereof,
and do what may be necessary to pro-
tect his interest in this suit. And it is
further ordered that a copy hereof be
published once a week for four weeks
in the SOUTHWEST VIRGINIAN, and that
a copy be posted at the front door of
the court-house of this county on the
first day of the next term of the county
court.

A Copy—Teste:

A. B. MUNSEY, Clerk.

Orr. Ely & Orr, p. q.

a-30-46

\$5-00